ORIGINAL

Supreme Court, U.S.
FILED
APR 19 1991
OFFICE OF THE CLERK

No. 90-7477

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

RECEIVED
HAND DELIVERED
APR 19 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

WILLIAM LEWIS SMITH,

Petitioner,

v.

RICHARD LANHAM, ET AL.

Respondents.

RESPONDENT DR. WAYNE S. BARRY'S BRIEF IN OPPOSITION TO PETITIONER WILLIAM LEWIS SMITH'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

David H. Bamberger (Counsel of Record)
Glen K. Allen

Piper & Marbury
Charles Center South
36 South Charles Street
Baltimore, Maryland 21201
(301)539-2530

Attorneys for Respondent
Dr. Wayne S. Barry

27 pp

QUESTION PRESENTED

Whether a Court of Appeals Should Accept an Appellate Brief as the Functional Equivalent of a Notice of Appeal, When Doing So Effectively Eliminates the Requirement of Filing a Separate Notice of Appeal?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.	i
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT IN OPPOSITION	5
ARGUMENT.	6
I. MR. SMITH SEEKS CERTIORARI ON AN EXTRAORDINARILY NARROW ISSUE.	6
II. THE DIALOGUE AMONG THE CIRCUITS ON THE NARROW ISSUE ON WHICH SMITH SEEKS CERTIORARI IS STILL UNDEVELOPED	8
III. THE PRESENT CASE HAS UNIQUE FACTS LIMITING ITS SCOPE AS PRECEDENT.	10
IV. THE SMITH V. GALLEY OPINION IS NOT IN CONFLICT WITH SUPREME COURT PRECEDENTS	12
CONCLUSION.	14

TABLE OF AUTHORITIES

Cases	Page
Alamo Chemical Transportation Co. v. N/V Overseas Valdes, 744 F.2d 22 (5th Cir. 1984)	7
Allah v. Superior Court, 871 F.2d 887 (9th Cir. 1989)	9
Calvert v. Sharp, 748 F.2d 861 (4th Cir. 1984), cert. denied, 471 U.S. 1132 (1985)	3
Coppedge v. United States, 369 U.S. 438 (1962)	4, 6
FirsTier Mortgage Co. v. Investors Mortgage Ins., 111 S. Ct. 648 (1991)	12-13
Florida Women's Medical Clinic, Inc. v. Smith, 706 F.2d 1172 (11th Cir. 1983)	8
Frace v. Russell, 341 F.2d 901 (3d Cir.), cert. denied, 382 U.S. 863 (1965)	8
Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982)	6
Jurgens v. McKasy, 905 F.2d 382 (Fed. Cir. 1990)	9
McMillan v. Barksdale, 823 F.2d 981 (6th Cir. 1987)	6-7
Mosley v. Cozby, 813 F.2d 659 (5th Cir. 1987)	7
Munden v. Ultra-Alaska Associates, 849 F.2d 383 (9th Cir. 1988)	6
Smith v. Galley, 919 F.2d 893 (4th Cir. 1990)	passim
Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988)	5
United States v. Cooper, 876 F.2d 1192 (5th Cir. 1989)	9
West v. Atkins, 487 U.S. 42 (1988)	3

STATUTES AND RULES

Fed. R. App. P. 3	5, 6, 7
Fed. R. App. P. 4	1, 6, 13
Loc. Rule 34(b)	2, 11

STATEMENT OF THE CASE

Mr. Smith's statement of the case requires supplementation or correction in several respects. First, it fails adequately to discuss two important facts. Second, it describes Dr. Barry's June 24, 1988 Supplemental Brief somewhat tendentiously. Finally, it mischaracterizes the Fourth Circuit's reasoning in Smith v. Galley.

1. Facts Not Adequately Discussed. Mr. Smith in his statement of the case makes only oblique reference to a letter he received on April 21, 1988 from Leo P. Hylan, Esquire, the court-appointed attorney who represented Smith at the jury trial before the District Court. The letter, however, provides important background to Smith's failure to comply with F.R.A.P. 4(a).

In the first two paragraphs of this April 21 letter, Mr. Hylan states:

> Dear Mr. Smith:
>
> Mr. Bell has informed me that you have attempted to appeal this matter. Although you did not send me a copy of this Notice of Appeal, I am certain from the circumstances that it is premature and thus void.
>
> I again strenuously urge you not to appeal this matter. I do not think there are any issues you will be able to prevail upon before the Fourth Circuit. The Order denying the Motion for J.N.O.V. was entered April 13, 1988. This would give you up until May 13, 1988 before you must file an appeal. I would urge you to take my advice and not file an appeal, or at least seek a second legal opinion on the matter.

This letter shows that Smith had express notice that his March 22, 1988 notice of appeal was premature and void. It shows further that he received this information in abundant time to have filed a new, effective notice of appeal. Smith did not, nonetheless, file a new notice of appeal.[1/]

Smith also gives abbreviated discussion in his statement of the case to the role played in this matter by the materials that the Fourth Circuit court clerk under Local Rule 34(b) sends to all litigants in a pro se appeal. Smith notes, correctly, that he received the preprinted form for his informal brief from the clerk in accordance with this local rule. He fails to mention, however, that accompanying this preprinted informal brief form was a document entitled "Order to Proceed on Informal Brief." This document provided detailed instructions as to filing the brief and serving it on all parties, and it set forth the addresses of all litigants, including that of Dr. Barry's counsel.[2/] Smith's receipt of these materials supports an inference that his decision to file an appellate brief, his service of this brief on Dr. Barry, and

---

1/ The letter is found in the joint appendix to the Fourth Circuit Appeal at pages 81-82.

2/ A copy of the "Order to Proceed on Informal Brief" received by Dr. Barry is attached as Exhibit 1. Presumably Mr. Smith received an identical order. This order was not included in the joint appendix. The Fourth Circuit, however, referred to the order in its opinion. See Smith v. Galley, 919 F.2d at 895-96.

the timing of his filing did not originate with him, but rather were responsive to instructions he received from the Fourth Circuit.

2. Tendentious Description of Dr. Barry's June 24, 1988 Supplemental Brief. Smith places considerable emphasis in his statement of the case on the fact that Dr. Barry asserted for the first time in his June 24, 1988 Supplemental Brief that Smith's notice of appeal was defective. The reality of the matter, however, is that when on April 28, 1988 Dr. Barry submitted his initial informal brief, the Fourth Circuit's decision in Calvert v. Sharp, 748 F.2d 861 (4th Cir. 1984), cert. denied, 471 U.S. 1132 (1985) was entirely dispositive of Smith's appeal. Dr. Barry had no reason to present additional arguments; it would have been superfluous to have done so. When on June 20, 1988, Calvert was overruled by this Court's decision in West v. Atkins, 487 U.S. 42 (1988), Dr. Barry then had reason to present the additional argument that Smith's notice of appeal was defective. This does not mean, as Smith would appear to suggest, that this argument regarding defects in the notice of appeal is merely "technical" or is lacking in merit.

3. Mischaracterization of Fourth Circuit's Opinion in Smith v. Galley. Smith's description of the Fourth Circuit's opinion in Smith v. Galley appears to imply that the court inexplicably relied on facts extraneous to appropriate

"functional equivalent" analysis. In reality, however, the "functional equivalent" determination is highly fact-specific, since it is predicated on a special solicitude for incarcerated and indigent defendants. See Coppedge v. United States, 369 U.S. 430, 442 n.5. (1962). In the present case, there were a number of different facts relevant to the "functional equivalent" determination. It was relevant that Smith received the April 21 letter from Mr. Hylan; it was relevant also that Smith filed his appellate brief in response to the Fourth Circuit's "Order to Proceed on Informal Brief." The Fourth Circuit considered these different facts and found them significant. Its reliance on these facts was in no respect logically inconsistent with "functional equivalent" analysis.

SUMMARY OF ARGUMENT IN OPPOSITION

Petitioner seeks certiorari on an extraordinarily narrow issue, i.e., whether a particular document -- an appellate brief -- falls within the "functional equivalent" exception to F.R.A.P. 3(a)'s requirement of the timely filing of a valid notice of appeal. An issue this narrow -- it could be resolved in a paragraph of discussion -- does not merit the attention of the Supreme Court. Morever, given the narrowness of this issue, the dialogue between the circuits on this point has developed slowly and is still inchoate. Hence, it would be premature for the Court to take certiorari on this issue at this time, even if the issue were otherwise worthy of certiorari. Further, there are facts unique to this case that limit its potential significance as precedent. Finally, the petitioner's contentions notwithstanding, the Fourth Circuit's decision below in this case is not in conflict with any decisions of this Court. To the contrary, the Fourth Circuit's opinion is supported by this Court's decision in Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988).

ARGUMENT

I. MR. SMITH SEEKS CERTIORARI ON AN EXTRAORDINARILY NARROW ISSUE

F.R.A.P. 3(a) provides that an appeal from a district court to a court of appeals "shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4 [i.e., within 30 days after entry of judgment]." The timely filing of a valid notice of appeal is a jurisdictional prerequisite. Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982). Ordinarily this notice of appeal is a separate document specifying the parties taking the appeal, the judgment appealed from, and the court to which appeal is taken. See F.R.A.P. 3(c); see also Form 1 in Appendix of Forms to Appellate Rules. Over the course of several decades, however, the Supreme Court and the Court of Appeals have developed a rather narrow exception to the requirement of filing a separate notice of appeal. This exception rests generally on special concern for incarcerated and indigent defendants and applies to documents that are the "functional equivalent" of notices of appeal. See Coppedge v. United States, 369 U.S. 438, 442 n.5. (1962); Munden v. Ultra-Alaska Associates, 849 F.2d 383, 387-88 (9th Cir. 1988). A great variety of documents have been considered -- some accepted, some rejected -- as satisfying the "functional equivalent" determination. See, e.g., McMillan v. Barksdale,

823 F.2d 981, 982-83 (6th Cir. 1987) (pro se motion for certificate of probable cause accepted as functional equivalent of notice of appeal); Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987) (motion for rehearing rejected as functional equivalent of notice of appeal); Alamo Chemical Transportation Co. v. NU Overseas Valdes, 744 F.2d 22, 24 (5th Cir. 1984) (motion for enlargement of time to file appellate brief rejected as functional equivalent of notice of appeal).

Against this background, the narrowness of the question on which Smith seeks certiorari becomes apparent. Smith, in his question presented for certiorari, poses the question whether one specific document -- an appellate brief -- should be permitted to serve as the functional equivalent of a notice of appeal. The petitioner, in other words, would have the resources of the Supreme Court of the United States engaged to determine one particular application of a narrow exception to the requirements of F.R.A.P. 3(a), itself a rather limited rule. The particular question posed by Smith could be resolved in a paragraph of discussion, as it has been by the Courts of Appeal that have addressed it. Dr. Barry would submit, with respect, that an issue this narrow does not merit the attention of the highest court in the land.

II. THE DIALOGUE AMONG THE CIRCUITS ON THE NARROW ISSUE ON WHICH SMITH SEEKS CERTIORARI IS STILL UNDEVELOPED

Smith seeks certiorari on the grounds that there is conflict between certain circuit court decisions on the question of allowing an appellate brief to serve a second function as a notice of appeal. It is true that there is a limited conflict on this point, but it is also true that the dialogue between the circuits on this question has hardly developed. This is not surprising, given the narrowness of the issue.

The question appears to have first arisen in 1965, in Frace v. Russell, 341 F.2d 901 (3d Cir. 1965). The Third Circuit in that case did not discuss its decision to treat a prisoner's brief for appeal as a notice of appeal. 341 F.2d at 903. Nearly two decades later the question arose again in Florida Women's Medical Clinic, Inc. v. Smith, 706 F.2d 1172 (11th Cir. 1983). In this civil case, the Eleventh Circuit disapproved the appellant's contention that its appellate brief should be accepted as a notice of appeal. The Eleventh Circuit observed that "[a]ppellant cites no authority for the proposition that a Court may eliminate entirely the requirement for filing a notice of appeal." The Eleventh Circuit Court did not cite or discuss Frace. 706 F.2d at 1173.

Several years later, in Allah v. Superior Court, 871 F.2d 887 (9th Cir. 1989), the Ninth Circuit held that a prisoner's appellate brief "fulfilled all the purposes of a notice of appeal." 871 F.2d at 889-90. The Ninth Circuit in Allah did not cite or discuss Frace or Florida Women's Clinic.

In U.S. v. Cooper, 876 F.2d 1192 (5th Cir. 1989), the Fifth Circuit noted the conflict between Frace and Florida Women's Clinic, and held that the reasoning in Florida Women's Clinic was correct. 876 F.2d 195-96. In Jurgens v. McKasy, 905 F.2d 382 (Fed. Cir. 1990), the Federal Circuit, in a footnote in which it cited Cooper, held that an appellate brief cannot substitute for a notice of appeal. 905 F.2d at 385 n. 4. Finally, in the present case, the Fourth Circuit noted the conflict between Cooper and Florida Women's Clinic on the one hand and Frace on the other, and aligned itself with Cooper and Florida Women's Clinic. 919 F.2d at 896. Neither the Cooper, Jurgens nor present Smith decision cited or discussed the Allah decision.

As this summary of the case law indicates, the conflict, such as it is, on the issue on which Smith seeks certiorari has not generated a particularly vigorous debate. One finds, on the one hand, ipse dixit decisions by the Third and Ninth Circuits in Frace and Allah, and, on the other, a basic rationale set forth in Florida Women's Clinic that is

followed in Cooper, Smith and Jurgens. The Frace and Allah decisions articulated no rationale for their decisions to counter that set forth in Florida Women's Clinic, and consequently there has been little development of the issue. Indeed the Cooper, Smith and Jurgens decisons have not even mentioned Allah.

It is unlikely, but perhaps not impossible, that at some future time a real debate might emerge. This would be contingent on those who take the Frace-Allah position being able to conceive a rationale to counter that set forth in Florida Women's Clinic and adaoted in Cooper and Smith. If this occurred, one might be able to speak meaningfully of a "conflict" among the circuits. But that speculative state of affairs is far removed from the facts now existing. The present facts show only a smattering of decisions and an inchoate debate on an extraordinarily narrow issue. The time for guidance by the Supreme Court has not arrived, if indeed it ever will.

III. THE PRESENT CASE HAS UNIQUE FACTS LIMITING ITS SCOPE AS PRECEDENT

If this Court were inclined to take certiorari on an issue so narrow as that of whether a particular document may or may not serve as the functional equivalent of a notice of

appeal, the Court, of course, would have before it the entire case. It is, therefore, a relevant consideration that this case contains unique facts, and is consequently likely to have limited precedential import.

One fact that marks this case as sui generis concerns the April 21 letter Smith received from his attorney Hylan. Smith received this letter during the interval between the time his notice of appeal had been rendered void and the deadline for filing a new and effective notice of appeal. As the Fourth Circuit noted, this letter greatly weakens the degree of solicitude to which Smith, as a pro se appellant, can lay claim. A set of facts including such a letter is not likely to recur.

Another fact limiting the precedential scope of this case is the role played by Fourth Circuit Local Rule 34(b). As mentioned in the statement of the case, Smith's receipt of the Fourth Circuit's "Order to Proceed on Informal Briefs" pursuant to this local rule greatly weakens the inference that the decision to file the appellate brief, and to file it when he did, originated with Smith. Few other circuits, if any, have a local rule comparable to Fourth Circuit Local Rule 34(b).[3/]

3/ Counsel for Dr. Barry has looked with care through the local rules and internal operating procedures of all other circuits and not found any rule or procedure comparable to Fourth Circuit Local Rule 34(b).

Another fact marking this case as unique concerns the particular language used by Smith in his appellate brief. Even were this brief permitted to serve a dual function as a notice of appeal, it would still fail to comply with relevant requirements for notices of appeal. For though Smith asserts that this surrogate notice of appeal encompases Dr. Barry, nowhere in the brief does Smith mention Dr. Barry or the order dismissing Dr. Barry from the case. The focus of Smith's concern in this brief is an alleged collusion between his attorney and the defendants' (other than Dr. Barry) attorney. Smith's nearest approach to a reference to Dr. Barry is his request for a "new trial on all issues triable by jury." The order dismissing Dr. Barry, however, was not an issue triable by jury. The specific language of the brief thus is an important factor weighing against Smith in this matter, and, again, this particular language is not likely to be found in subsequent cases.

IV. THIS SMITH V. GALLEY OPINION IS NOT IN CONFLICT WITH SUPREME COURT PRECEDENT

Smith suggests that the Fourth Circuit's opinion in Smith v. Galley is in conflict with this Court's opinions in Torres v. Oakland Scavenger Co., 487 U.S. 312 (1988) and FirsTier Mortgage Co. v. Investors Mortgage Ins., 111 S. Ct.

648 (1991). Torres, however, is precedent supporting the Fourth Circuit's decision, for in that case this Court required strict compliance with the requirements of F.R.A.P. 3. As the Court there noted, "[p]ermitting imperfect but substantial compliance with a technical requirement is not the same as waiving the requirement altogether." 487 U.S. at 316-17. Permitting an appellate brief to serve a second function as a notice of appeal in effect eliminates the requirement for filing a notice of appeal. It thus has the effect of "waiving the requirement altogether," the result disapproved in Torres.

FirsTier Mortgage focused specifically on the requirements of F.R.A.P. 4(a)(2), which provides that "a notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day thereof." In that case, this Court, holding that a bench ruling granting a summary judgment motion was a "decision" within the language of Rule 4(a)(2), noted that this interpretation was entirely consonant with the intent of Rule 4(a)(2)'s drafters. 111 S. Ct. at 653. In the present case, by contrast, there is no support in the notes of the Advisory Committee on Appellate Rules for eliminating entirely the requirement of filing a notice of appeal, the result that follows from permitting an appellate brief to serve a double function as a notice of appeal.

CONCLUSION

For the reasons stated and upon the authorities set forth herein, Mr. Smith's petition for a writ of certiorari should not be granted.

Respectfully submitted,

David H Bamberger

David H. Bamberger*
Glen K. Allen

Piper & Marbury
36 South Charles Street
Baltimore, Maryland 21201
(301)539-2530

*Counsel of Record

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-7096

Smith v. Galley

FILED
APR 13 1988
U.S. Court of Appeals
Fourth Circuit

ORDER TO PROCEED ON INFORMAL BRIEF

This appeal having been filed in this Court and it appearing that at least one party is proceeding without counsel, IT IS ORDERED:

1. The case shall be submitted on the lower court record and, at the election of the parties, on informal briefs, the form for which is attached. Parties may, but need not, cite statutes and legal authority to support their contentions. Only the basic facts and issues need be set forth, as requested on the form. If a supporting memorandum is essential to address the issues adequately, it may attached to the briefing form.

The Court will review the entire record on appeal for possible meritorious issues; it will not limit its review solely to the issues raised in the parties' briefs.

2. The six-digit docket number appearing on the first page of this order shall be placed prominently on every paper filed by any party to this appeal, as well as on all correspondence addressed to the Court.

3. Parties electing to submit informal briefs shall mail their briefs to the Court, with copies to all parties, NO LATER THAN May 4, 1988 .

4. The original and one copy of the parties' briefs shall be mailed to the Court, with first class postage pre-paid and affixed, addressed as follows:

United States Court of Appeals
for the Fourth Circuit
United States Courthouse
10th and Main Streets
Richmond, VA 23219

5. Every document mailed to the Court by any party must bear a notation that a complete copy thereof was mailed to all other parties at the same time; the Court must receive the original and one copy of every such document. The notation must show the complete name and mailing address of the persons to whom the copies were sent and the date of mailing.

6. Extensions of briefing deadlines are not favored by the Court and are granted only for good cause stated in writing. Requests for extensions MUST BE RECEIVED BY THE COURT BEFORE THE EXPIRATION OF THE DEADLINE.

7. Transcript of trial proceedings WILL NOT be prepared at government expense except in those limited cases in which the Court concludes from the briefs, the claims of the parties, and the record that the appeal presents a substantial question that cannot be determined without a transcript.

8. The Court will not appoint counsel or schedule an appeal for oral argument unless it concludes, after having reviewed the case, that the appeal cannot be decided on the basis of the informal briefs and the record. Therefore, it is unnecessary to request the appointment of counsel or oral argument.

9. Appellants may, but need not, file a docketing statement within 10 days of filing of the notice of appeal. The form and instructions should already have been provided to appellant by the district court.

JOHN M. GREACEN
CLERK

Copies to:

William Lewis Smith
ROXBURY CORRECTIONAL INSTITUTION
Route 3, Box 4444
Hagerstown, MD 21740

Glenn William Bell, Esq.
OFFICE OF THE ATTORNEY GENERAL OF MARYLAND
Munsey Building
7 North Calvert Street
Baltimore, MD 21202

E Fremont Magee, Esq.
PIPER & MARBURY
1100 Charles Center South
36 South Charles Street
Baltimore, MD 21201

Charles Preston Scheeler, Esq.
OFFICE OF THE U. S. ATTORNEY
United States Courthouse
Room 820
101 West Lombard Street
Baltimore, MD 21201

Leo Patrick Hylan II, Esq.
1204 Stonewood Court
Annapolis, MD 21401
(For Information Only)

Gerson Bernard Mehlman, Esq.
WHITEFORD, TAYLOR & PRESTON
Signet Tower
Suite 1400
7 St. Paul Street
Baltimore, MD 21202
(For Information Only)

Joan S. Minchew, Esq.
WHITEFORD, TAYLOR & PRESTON
Signet Tower
7 St. Paul Street

Baltimore, MD 21202
(For Information Only)

James Russell Chason, Esq.
WHITEFORD, TAYLOR & PRESTON
300 LaFayette Building
40 West Chesapeake Avenue
Towson, MD 21204
(For Information Only)

Loc. R. 34(a) Oral Argument; pre-argument review and summary disposition of appeals; statement regarding the need for oral argument.

In the interest of docket control and to expedite the final disposition of pending cases, the chief judge may designate a panel or panels to review any pending case at any time before argument for disposition under this rule.

In reviewing pending cases before argument, the panel will utilize the minimum standards set forth in FRAP 34(a). If all of the judges of the panel to which a pending appeal has been referred conclude that oral argument is not to be allowed, they may make any appropriate disposition, without oral argument, including but not limited to, affirmance or reversal.

In furtherance of the disposition of pending cases under this rule, any party may include in his brief at the conclusion of the argument section a statement setting forth the reasons why, in his opinion oral argument should be heard.

Loc. R. 34(b) Informal Briefs

Whenever an application for a certificate of probable cause from the denial of a writ of habeas corpus or an appeal taken from the denial of a motion under 28 U.S.C. 2255, or any pro se appeal shall be filed, the Clerk shall notify the appellant that he may file within twenty-one days after receipt of such notice, an informal brief, describing the grounds upon which he claims he is entitled to relief and setting forth the merits of his appeal. Any such informal brief filed by any party shall be considered, together with the record and other relevant papers, by the panel to which the proceeding has been referred.

Parties proceeding pursuant to this section shall be provided copies of this local rule by the clerk.

U T STATES COURT OF APPEALS
R THE FOURTH CIRCUIT

88-7096 Smith v. Galley
CA-83-3395-B

INFORMAL BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary. You need not limit your brief solely to this form but you should be certain that whatever you file answers the questions below. In any event, the court prefers short and direct statements.

1. Did the district court fail to consider important grounds for relief. If so, what grounds?

2. Did the district court incorrectly decide the facts? If so, what facts?

3. Do you think the district court applied the wrong law? If so, what law do you want applied?

BEST AVAILABLE COPY

4. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

5. What action do you want the Court to take in this case?

6. If you think the Court should hear oral argument in this case, why do you think so?

Signature
NOTARY NOT REQUIRED

IMPORTANT: A COPY OF THIS BRIEF AND ANY ATTACHMENTS MUST BE SENT TO ALL PARTIES IN THE CASE. PLEASE LIST BELOW THE NAMES AND ADDRESSES OF THE PARTIES WHO WERE SENT A COPY OF YOUR BRIEF, TOGETHER WITH THE DATES ON WHICH THEY WERE SENT.

CERTIFICATE OF SERVICE

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

No. 90-7477

WILLIAM LEWIS SMITH,

Petitioner,

v.

RICHARD LANHAM, ET AL.

Respondents.

RESPONDENT DR. WAYNE S. BARRY'S
BRIEF IN OPPOSITION TO PETITIONER
WILLIAM LEWIS SMITH'S PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

I HEREBY CERTIFY that on April 19, 1991, two (2) copies of the foregoing Pleading were sent, postage prepaid, to each of the following:

Glenn W. Bell
Assistant Attorney General
Counsel for Appellees, Victor, Turner,
Hall, Brown, Jackson and Wilkins
Office of the Attorney General
Correctional Litigation Unit
200 St. Paul Place - 19th Floor
Baltimore, Maryland 21202

Steven H. Goldblatt
Cynthia S. Mazur
Attorney for Petitioner
Counsel of Record
Appellate Litigation Clinical Program
Georgetown University Law Center
111 F Street, N.W.
Washington, D.C. 20001-2095

Glen K. Allen

DAVID H. BAMBERGER

PIPER & MARBURY

CHARLES CENTER SOUTH
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3010
301-539-2530
FAX 301-539-0489
CABLE PIPERMAR BAL
TELEX 908054

1200 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-861-3900

14 AUSTIN FRIARS
LONDON EC2N 2HE
071-638-3833

117 BAY STREET
EASTON, MARYLAND 21601
301-820-4460

WRITER'S DIRECT NUMBER
576-1835

April 19, 1991

RECEIVED
HAND DELIVERED
APR 19 1991
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Mr. Coleman Williams, Clerk
Supreme Court of the United States
Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543

Smith v. Lanham
No. 90-7477

Dear Mr. Williams:

Please accept for filing Respondent Dr. Wayne S. Barry's brief in opposition to Petitioner William Lewis Smith's petition for a writ of certiorari. As the attached motion for leave to proceed in forma pauperis indicates, Mr. Smith is proceeding in forma pauperis. Hence, in accordance with Supreme Court Rule 15.2, we, as Respondent, are filing twelve typewritten copies of our opposition brief.

Sincerely,

Glen K. Allen

Glen K. Allen

GKA:ld
ENclosure